

17.02.2022
SL No. 1
Court No. 24
(P.M)

WPA 25497 of 2018

Manoj Kumar Mondal
Vs
The State of West Bengal & Ors.
(Via Video Conference)

Mr. Samarendra Nath Biswas,
Mr. Arunesh Pathak
... for the petitioner.

Ms. Tuli Sinha
... for the State

The petitioner is a retired primary school teacher. He joined service under the Exempted Category on 29th August, 2000 and retired from service on attaining his normal age of superannuation on 30th June, 2009. The petitioner was in service for a period of eight years ten months and three days.

As the petitioner did not complete the qualifying service for getting benefit of pension, accordingly, his prayer for pension has been rejected by the District Inspector of Schools (Primary Education), Nadia. The said Office Order bearing Memo No. 1088/PE, dated 26th September, 2018 issued by the District Inspector of Schools (Primary Education), Nadia is under challenge in the present writ petition.

The petitioner submits that he served as a Camp Assistant in the Refugee Relief and Rehabilitation Department under the Additional District Magistrate, Nadia. The appointment letter

issued in favour of the petitioner by the Additional District Magistrate (Relief) dated 25th June, 1971 mentions that the petitioner is being appointed as Camp Assistant, on a consolidated pay, inclusive of all allowances, temporarily, with effect from the date of joining until further orders. The appointment was purely temporary and the service was terminable with twenty-four hours notice. The petitioner accepted the said appointment.

By a communication dated 4th May, 1972 the petitioner was informed by the Additional District Magistrate that his service as Camp Assistant was no longer required and the same is terminated with effect from 31st May, 1972.

The petitioner participated in the selection process for appointment of primary school teacher under the Exempted Category and being successful was issued a letter of appointment on 22nd August, 2000 and he joined the service on 29th August, 2000 and retired on superannuation on 30th June 2009.

As the petitioner was found ineligible to receive pension due to shortfall in the qualifying service period of ten years, he made a representation before the District Inspector of Schools (Primary Education), Nadia but his prayer was turned down.

The primary contention of the petitioner is that the period of service that he rendered as Camp

Assistant be taken into consideration for the purpose of calculating the qualifying service period. If the period that he rendered service as the Camp Assistant is taken into consideration together with the period of service as the Assistant Teacher, the petitioner will qualify to receive pension.

In support of his prayer the petitioner has relied upon a judgment delivered by the Hon'ble Supreme Court in the matter of Parmeshwar Nanda Etc. – vs – The State of Jharkhand through Chief Secretary & Ors. Etc. reported in 2016 (1) SCC 9.

The State respondents have filed a report in the form of affidavit wherein it has been mentioned that as per Rule 3(f) of the West Bengal Primary Education Employees' (Death-cum-Retirement Benefit) Rules, 2009 the petitioner does not fall within the definition 'employee'.

As per the third proviso to Rule 12(1) of the said Rules, service rendered by an employee under the Central or any State Government or Union Territories shall count for determining qualifying services.

The service rendered by the petitioner in the Refugee Relief and Rehabilitation Department, Government of West Bengal as Camp Assistant since 25th June, 1971 to 31st May, 1972 i.e. for the period of eleven months and five days cannot be treated as service of an employee under the aforesaid Rules.

The service of the petitioner as Camp Assistant is not admissible towards counting qualifying service for pension.

I have heard the submission made on behalf of both the parties.

Admittedly, the petitioner did not complete the qualifying service period for being eligible to receive pension. The petitioner prays for adding the period of service that he rendered as Camp Assistant to the service that he rendered as Primary School teacher for the purpose of obtaining the said benefit.

As per Rule 12(9) any period of service not covered under Rule 12(1) to 12(8), shall not count as qualifying service. The service of the petitioner does not fall under any of the sub Rules of Rule 12. The petitioner also does not satisfy the definition of employee for the period he rendered service as Camp Assistant.

The judgment relied upon by the petitioner in Parmeshwar Nanda Etc. (supra) primarily deals with the Bihar Pension Rules, 1950. The Hon'ble Supreme Court clearly recorded that the entire case is based upon Rule 59 of the Rules and the Circular of the State Government dated 12th August, 1969 of the erstwhile State of Bihar.

The Court was of the opinion that as the appellants were never appointed by the Government

either on a temporary or on permanent basis but were engaged under the project i.e. the Scheme, therefore, the benefit of such a Circular cannot be claimed by the appellants. The notification for absorption and the subsequent letter of appointment do not contain any condition that the services rendered by the appellants under the project shall qualify for pension.

In the absence of any specific condition in the Circular to grant pensionary benefit, it is not possible to read that pensionary benefits are to be granted to the erstwhile employees of the project. An employee cannot turn around to say that the services rendered by them under the project shall be counted for pension.

The Court was of the opinion that the appellants have been appointed as fresh candidates and, therefore, their period of services for pension has to be calculated from the date of their regular appointment and, therefore, they cannot get any benefit of past service rendered by them.

The Hon'ble Supreme Court refused to interfere with the appeal as the Court was of the opinion that the appellants were absorbed as fresh appointees without pay protection and seniority. As a consequence thereof, they will not be entitled to count their past service rendered under the project for the purpose of pension. The appeal stood dismissed.

In a connected appeal with the aforesaid case being Civil Appeal No. 544 of 2020, which the petitioner specifically relies upon, the Court referred to Rule 103 of Bihar Pension Rules, 1950. The Court directed the State to consider the writ petitioners as continuing in service solely for the purpose of granting personal monetary benefits. The Court held that the petitioners were not entitled to pay salary for the period in any manner and neither claim and seniority over other Government servants.

The Court further recorded that in the State of Bihar, past services rendered by employees under the project were taken into consideration for pensionary benefits.

In the present case, the State of West Bengal does not take into consideration the past service rendered by a Camp Assistant, on temporary basis under the Refugee Relief and Rehabilitation department for the purpose of pensionary benefit.

The petitioner was duly giving benefit of reservation under the Exempted Category only because of the service rendered by him as Camp Assistant. He was treated to be in fresh service. The petitioner cannot claim further benefit by praying for taking into consideration the past service rendered by him as Camp Assistant.

The Pension Rules does not provide for counting of any such past service in a temporary project for grant of pensionary benefit to a primary school teacher.

In view of the above, no relief can be granted to the petitioner in the instant case. The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)